

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**VILLAGE MANOR, INC.,
CLEVELAND DEVELOPMENT,
INC., SOUTHEASTERN LIHTC
MANAGEMENT, INC., R. TIMOTHY
SINGLETON, SINGLETON &
ASSOCIATES, INC.,**

Plaintiffs,

vs.

**ARCH SPECIALTY INSURANCE
COMPANY, SCOTTSDALE
INSURANCE COMPANY, CHUBB
INSURANCE COMPANY, MARSH
USA, Inc.,**

Defendants.

Civil Action No. 2:08-cv-149-MHT

DEFENDANT MARSH USA, INC.'S MOTION TO DISMISS

COMES NOW Defendant Marsh USA, Inc. ("Marsh") and, pursuant to Rules 9 and 12(b)(6) of the Federal Rules of Civil Procedure, files this its Motion to Dismiss Count II of Plaintiffs' Complaint¹ for failure to state a claim upon which relief can be granted. In support of its motion, Marsh relies on the accompanying brief filed concurrently herewith.²

¹ The pleading initiating this action against Marsh is entitled "Third Party Complaint," and identifies the above-named "plaintiffs" as "third party plaintiffs" and the above-named defendants as "third party defendants." The pleading, however, was filed in an action with an assigned case number of CV-2005-2795, which action was terminated on November 11, 2007, with the filing of a Stipulation of Dismissal with Prejudice. Accordingly, the pleading is misnamed a third party complaint, it incorrectly identified the parties as "third parties", and it is filed in an action that was previously terminated by law. In an effort to enhance judicial economy and to avoid the waste of judicial time and resources, which would be created by a dismissal of the Complaint on these grounds and would result in an inevitable re-filing and removal, for the purposes of the Joint Notice of Removal and Marsh's Motion to Dismiss, Marsh treats the pleading as a new action.

² Marsh filed its Answer and Affirmative Defenses to Plaintiffs' Complaint concurrently and in the alternative.

This the 10th day of March, 2008.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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